

# Fair Finance Watch

August 15, 2007

By fax to 202-452-3819

Board of Governors of the Federal Reserve System  
Ms. Jennifer J. Johnson, Secretary  
20th and Constitution Avenue, NW  
Washington DC 20551

RE: Docket No. OP-1288 - HOEPA (and, relatedly, HMDA)

Dear Ms. Johnson:

On behalf of Fair Finance Watch and its affiliates ("FFW"), this is a timely comment on the above-captioned docket number, and on the Home Ownership and Equity Protection Act (HOEPA). FFW has submitted comments to you about HOEPA loans made by, among others, Citigroup, HSBC, Wells Fargo, and others. We have also complained to you, without any ameliorative action, that a number of HMDA-reporters refuse to provide their data, which would show among other things HOEPA loans, in electronic format. (This was raised most recently directly to Chairman Bernanke, who appeared to take note of the issue; we'll see.).

I also write as a member of the NCRC board of directors, to urge the Federal Reserve to expeditiously implement strong protections against abusive lending per the Federal Reserve's authority under the Home Ownership and Equity Protection Act (HOEPA). The nation stands on the edge of a mortgage tsunami of massive foreclosures. The federal agencies themselves estimate that close to two million families face dire financial circumstances and/or foreclosure when the interest rates on their adjustable rate mortgages (ARMs) reset and climb higher this year and in 2008.

The Federal Reserve Board needs to build upon the protections contained in the recently adopted interagency statement on subprime mortgage lending (Federal Register, July 10, 2007). In response to the specific questions posed by the Federal Reserve Board, NCRC believes that strong limits and prohibitions must be applied to non-traditional and high-cost loans in order to prevent unfair and deceptive lending in violation of HOEPA:

" Prepayment penalties: NCRC believes that the Federal Reserve must apply strict limits to prepayment penalties. Prepayment penalties must not apply after the expiration

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of teaser rates in ARM prime and subprime loans. The recent interagency statement on subprime lending recommends that lenders terminate prepayment penalties 60 days before the expiration of teaser rates. NCRC believes at least a 90 day time period is needed so that borrowers have sufficient time to shop for and receive another loan if necessary. For fixed-rate subprime loans, prepayment penalties must not extend beyond two years. Responsible lenders have voluntarily applied limits to prepayment penalties similar to NCRC's recommendations. Limiting prepayment penalties prevents borrowers being trapped in abusive and predatory loans.

" Escrows for Taxes and Insurance: NCRC believes that the Federal Reserve must require escrows for all loans, prime and subprime, fixed and adjustable rate. Currently, since escrows are not required, deceitful lending flourishes when unscrupulous brokers and lenders blind borrowers to the true cost of their loans by not discussing payments for insurance and taxes. Most of the loans in NCRC's CRF program consist of loans without escrows.

" Stated Income or Low Doc Loans: NCRC agrees with the Comptroller of the Currency that stated income or low doc loans are prone to abuse when predatory lenders and brokers inflate borrowers' incomes to qualify them for unsustainable loans. This type of abuse is most prevalent on subprime loans per NCRC's experience with the CRF program. Stated income or low doc loans must be prohibited on subprime and/or ARM loans. At the very least, the Federal Reserve Board must establish clear protections and procedures for reduced documentation loans including the requirement that pay stubs, tax forms, and other acceptable verification of income must be received by the lender.

" Unaffordable Loans: A core plague of predatory lending is lending beyond borrower payment ability. The federal agencies have correctly identified that abusive lenders are underwriting ARM loans at initial and low rates, leaving borrowers vulnerable to rapid rate increases. The recent guidance on subprime lending requires underwriting at the fully-indexed rate. While this is a step in the right direction, NCRC strongly recommends underwriting requirements at the maximum possible rate or rates above fully-indexed rates. There are times when the LIBOR or other benchmark rates are low, meaning that the fully-indexed rate may be an artificially low rate for underwriting purposes. We understand that it was common industry practice to underwrite loans at two percentage points above the fully-indexed rate. The Federal Reserve must consider either some suitable cushion above the fully-indexed rate or the maximum possible rate stipulated in the loan contract. Finally, there should be a presumption that a loan is unaffordable if the borrower's debt-to-income ratio exceeds 50%.

NCRC believes that the Federal Reserve must promulgate a rule that goes beyond the specific questions they posed at the hearing in June. In order to effectively curb deceptive loans, the Federal Reserve must enact the following:

" Steering prohibition - The Federal Reserve Board must declare that steering borrowers qualified for prime loans into subprime loans is an unfair and deceptive

practice. NCRC's recent study, *Income is No Shield against Racial Differences in Lending*, documents that middle- and upper-income minorities are significantly more likely than middle- and upper-income whites to receive subprime loans. Moreover, previous NCRC research and other studies reveal that racial disparities in lending do not disappear after considering creditworthiness and other key variables. Borrowers lose substantial amounts of wealth when they are steered into high-cost loans.

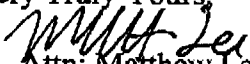
" Lender liability - The Federal Reserve must hold lenders liable for deceptive and fraudulent practices committed by brokers with whom they do business. Since up to 70% of the loans originated start with brokers, lenders must be motivated to strictly monitor broker behavior. Likewise, lenders and brokers must face serious financial penalties if they intimidate or pressure appraisers to meet certain home values. Fraudulent appraisals have contributed significantly to the rise of delinquencies and defaults.

The industry will argue that some of the limitations described above will cut off access to credit for working class and minority communities. In the mid- to late-1990's before the massive Wall Street financing of subprime lending, a strengthened Community Reinvestment Act (CRA) motivated lenders to significantly increase prime lending to working class and minority families and communities. Comprehensive regulation and legislation does not reduce lending; instead it provides competitive advantages for responsible prime and subprime lenders to increase their lending to traditionally underserved populations.

While NCRC urges quick adoption of our suggestions for Federal Reserve rulemaking under HOEPA, NCRC also believes that the most effective response to predatory lending is comprehensive Congressional legislation. Currently, NCRC strongly endorses Senator Schumer's Borrower's Protection Act of 2007 (S. 1299) and Representative Ellison's Fairness for Homeowners Act of 2007 (H.R. 3081). These bills would go beyond the ability of the Federal Reserve under HOEPA to stomp out predatory practices since they would directly impose good faith and fair dealing duties on appraisers, brokers, and other actors. Every day, we read and hear about troubling signs from our CRF clients of a foreclosure crisis and serious losses associated with abusive loans. Accordingly, the Federal Reserve must expeditiously implement strong HOEPA reforms and Congress must pass a strong anti-predatory law.

Thank you for this opportunity to comment on this critical matter. If you have any questions, please contact me at [lee@fairfinancewatch.org](mailto:lee@fairfinancewatch.org) or 718-716-3540.

Very Truly Yours,



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